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Supreme Court, U.S.
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No.

In the Supreme Court of the United States

THE STATE OF ILLINOIS,

Petitioner,

vs.

JOSE TORRES,

Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED FOR REVIEW

1. Whether the running of a warrant check on an individual is not a Fourth Amendment search since the information obtained in the warrant check consists of matters of public record in which the suspect possesses no reasonable expectation of privacy.

2. Assuming a police officer's decision to run a warrant check implicates the Fourth Amendment, whether, pursuant to *Hiibel v. Nevada*, there is no need for independent reasonable suspicion to conduct a warrant check of a suspect's name that was legitimately obtained during a valid *Terry* stop, because, absent a warrant check, a police officer's authority to ascertain a suspect's name is pointless unless the police officer personally knows the background of the suspect.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, the People of the State of Illinois, prays for a Writ of Certiorari to review the judgment and order of the Illinois Appellate Court, which was entered on March 19, 2004.

OPINIONS BELOW

The opinion of the Illinois Appellate Court, which reversed the trial court's denial of respondent's motion to suppress, and ultimately reversed respondent's conviction on the basis that police officers violated his Fourth Amendment rights in running a warrant check during their investigation of an alleged domestic violence altercation, was entered on March 19, 2004, and is reported under *People v. Torres*, 347 Ill. App. 3d 252, 807 N.E.2d 654 (2004). The opinion is included in Appendix A.

The order of the Illinois Supreme Court denying petitioner's Petition for Leave to Appeal this judgment was entered on October 6, 2004, under docket No. 98301. The order is included in Appendix B (B-1, App. 20).

STATEMENT OF JURISDICTION

The order and judgment of the Illinois Appellate Court was entered on March 19, 2004. No Petition for Rehearing was filed. A Petition for Leave to Appeal was filed in the Illinois Supreme Court on April 23, 2004. On June 29, 2004, Petitioner filed a motion to cite the case of *Hiibel v. Nevada*, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2004) as additional authority. The motion is included in Appendix B (B-2, App. 21). Respondent filed a response to petitioner's motion to cite additional authority. See Appendix B (B-3, App. 26). On July 13, 2004, the Illinois Supreme Court entered an order allowing petitioner's motion to cite additional authority. See Appendix B (B-4, App. 31). The Illinois Supreme Court denied petitioner leave to

appeal on October 6, 2004. See Appendix B (B-1). No Petition for Rehearing was filed in the Illinois Supreme Court. This Petition for a Writ of Certiorari is filed within 90 days of the Illinois Supreme Court's order denying the petition for leave to appeal, as required by Rule 13(1) of the rules of the Supreme Court. The decision of the Illinois Appellate Court was based on federal constitutional law, namely, the Fourth Amendment, and therefore, the jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized. U.S. Const., amend. IV.

The Fourteenth Amendment to the United States Constitution requires the States to secure these rights. It provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., amend. XIV.

STATEMENT OF THE CASE

Respondent, Jose Torres, was charged with two counts of unlawful use of a weapon, and filed a motion to suppress the evidence against him, asserting that he was subjected to an illegal search and seizure. (Appendix A, App. 2). During the hearing on the motion, Officer Joe Kurpiel testified that, on February 6, 2002, at approximately 10 p.m., he saw a male, later identified as respondent, and a female, later identified as Rosea Cordero, respondent's girlfriend, engaged in what appeared to be a "domestic altercation" while sitting in a truck in the parking lot of a gas station. (Appendix A, App. 2). Officer Kurpiel explained that respondent's hands were "flying" in Ms. Cordero's direction while Ms. Cordero sat in a "very submissive" position. (Appendix A, App. 2). The officer testified that, in his opinion, the couple was not having a mere conversation, but was engaged in an argument. (Appendix A., App. 2).

In response, Officer Kurpiel and his partner approached the couple. (Appendix A, App. 2). Officer Kurpiel went to the passenger side of the truck and asked Ms. Cordero if everything was okay. (Appendix A, App. 3). She replied that she and respondent were arguing because he was seeing another woman, but she was nonetheless okay. (Appendix A, App. 3). While Officer Kurpiel spoke with Ms. Cordero, his partner simultaneously approached the driver's side of the car and spoke to respondent. (Appendix A, App. 3). According to Officer Kurpiel, his partner ascertained respondent's name and asked respondent to step out of the car. (Appendix A, App. 3). Officer Kurpiel subsequently ran a warrant check on respondent at his partner's request, but did not have an opportunity to tell his partner that Ms. Cordero claimed to be "okay" before completing this task. (Appendix A, App. 3). The warrant check revealed that respondent had a bond forfeiture warrant for the offense of driving under the influence of alcohol as a result of his failure to appear at a scheduled court date. (Appendix A, App. 3). A search was subsequently conducted and revealed an ammunition "magazine" in respondent's pocket and a fully

loaded and cocked .38 caliber semiautomatic handgun in the console of the truck. (Appendix A, App. 3).

A different version of events was related by Ms. Cordero. She stated that she and respondent were sitting together in the truck after purchasing cigarettes at the gas station. (Appendix A, App. 4). She was driving because respondent's license was suspended, and respondent was sitting in the passenger's seat. (Appendix A, App. 4). Ms. Cordero denied that she and respondent were arguing, and likewise denied that respondent made any gestures with his hands while they sat in the truck. (Appendix A, App. 4). In any event, Ms. Cordero stated that an officer approached the driver's side window where she was seated, asked her if she was okay, requested her driver's license and proof of insurance, and asked her to step out of the truck. (Appendix A, App. 4). When she complied, the officer searched the vehicle without seeking permission. (Appendix A, App. 4).

Respondent's testimony essentially mirrored Ms. Cordero's. He added that a police officer approached the passenger side of the truck and asked him to step out. (Appendix A, App. 5). The officer then patted him down and searched the truck. (Appendix A, App. 5). The officer did not ask respondent his name or request that the warrant check be conducted until his search uncovered the gun and magazine. (Appendix A, App. 5).

At the close of testimony, the trial court denied the motion to suppress. In doing so, the court stated that the officer's testimony, that respondent, "a very large male," and Ms. Cordero, "a very young smaller female," were involved in a "heated discussion or argument or disagreement," was clear and convincing, and thus concluded that the police officers properly approached to conduct a *Terry* stop. (Appendix C, App. 35). The trial court specifically found that, "at that time the officers did have a right to investigate to do a name check." (Appendix C., App. 35). The matter proceeded to a bench trial in which the parties stipulated to the evidence presented in the

motion to suppress. (Appendix A, App. 5). Respondent was subsequently found guilty of unlawful use of a weapon, after the court declared that it found respondent's testimony, along with Ms. Cordero's, to be wholly incredible. (Appendix C, App. 36). Respondent was sentenced to 18 months' probation. (Appendix A, App. 5).

On appeal, the Appellate Court reversed the trial court's judgment with respect to respondent's motion to suppress and likewise reversed respondent's conviction. (Appendix A, App. 19). The court held that, while the police officers properly approached the vehicle and obtained respondent's name, they exceeded the scope of the initial *Terry* stop when they ran a warrant check on respondent after Ms. Cordero informed them that she was "okay," thus completely alleviating the officers' suspicion that a domestic violence altercation might occur and terminating the officers' justification for the investigative stop. (Appendix A, App. 18-19).

REASONS FOR GRANTING THE WRIT

In the case of *People v. Harris*, 207 Ill. 2d 515, 802 N.E. 2d 219 (2003), *pet. for cert. pending* (No. 03-1224), the Illinois Supreme Court erroneously assumed that a warrant check constitutes a search under the Fourth Amendment and held that police officers may not run a warrant check on the passenger in a vehicle stopped for a traffic violation unless the officers have independent reasonable and articulable suspicion that the passenger has committed, is committing or is about to commit a crime. In the instant case, the Illinois Appellate Court extended the fundamentally flawed reasoning pronounced in *Harris* to *Terry* stops. Based on the determination that there was reasonable and articulable suspicion that respondent had or was about to commit a domestic violence offense, the Illinois Appellate Court found that the police officers properly conducted a *Terry* stop and legitimately ascertained the respondent's name during the stop. However,

the Illinois Appellate Court, relying on *Harris*' faulty analysis, failed to recognize that a warrant check is not a search and erroneously found that the Fourth Amendment did not permit the officers to run a warrant check of respondent's name because just prior to the running of the warrant check, respondent's girlfriend said she was okay. The Appellate Court, therefore, found that the officers needed independent reasonable and articulable suspicion of past wrongdoing in order to conduct the warrant check.

Contrary to the Illinois Appellate Court's decision, Fourth Amendment jurisprudence unquestionably supports the determination that a warrant check of the suspect's name is a reasonable and necessary component of a *Terry* stop. A warrant check is nothing more than the computerized retrieval of public records and does not in any way constitute a Fourth Amendment search. Under a Fourth Amendment analysis, a warrant check, by definition, is not a search or a seizure of a suspect's person, house, papers or effects. U.S. Const., amend. IV. Significantly, a warrant check reveals the existence of an arrest warrant that was judicially issued based on a probable cause finding of either the commission of a criminal offense or the failure to appear in court to answer to pending criminal charges. Therefore, once a name has been legally ascertained, even the most expansive interpretation of the Fourth Amendment does not demand independent reasonable and articulable suspicion to run a warrant check. Any holding to the contrary would, in essence, give a fugitive an expectation of privacy in the public record of the warrant that was executed because he committed a crime and failed to appear in court. Such an expectation of privacy is simply not one that society is prepared, or should be required, to honor.

Even if the running of a warrant check is found to implicate the Fourth Amendment, in the context of a valid *Terry* stop, there is still no legitimate reason to require that an officer possess an independent Fourth Amendment justification to run

a warrant check of the suspect. In fact, the Appellate Court's decision espousing this rule runs afoul of the principles set forth in the recent case of *Hiibel v. Nevada*, 159 L. Ed. 2d 292, 124 S. Ct. 2451 (2004). In *Hiibel*, this Court explicitly recognized that, under Fourth Amendment jurisprudence, questions concerning a suspect's identity are a routine and accepted part of many *Terry* stops, because "'the ability to briefly stop [a suspect], ask questions, or check identification in the absence of probable cause promotes strong governmental interests in solving crimes and bringing offenders to justice.'" *Hiibel*, 159 L. Ed. 2d at 302-03, 124 S. Ct. at 2458, citing *United States v. Hensley*, 469 U.S. 221, 229, 83 L. Ed. 2d 604, 612, 105 S. Ct. 675, 680 (1985). This Court, therefore, concluded that the request for identity has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. In making this determination, this Court reasoned that an individual's privacy right to information regarding his name was outweighed by the important governmental interest in obtaining identity information, because "knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder." *Hiibel*, 159 L. Ed.2d at 303, 124 S. Ct. at 2458.

Unless the holding in *Hiibel* is intended to be strictly limited to rural areas where law enforcement personnel are likely to personally know, or at least know the background of each person detained, the *Hiibel* reasoning must logically give law enforcement officers the authority to run a warrant check of the suspect's name. The Appellate Court's requirement that the police officers have an independent Fourth Amendment justification to run a warrant check of a name legitimately ascertained by the police has the practical effect of undermining a police officer's ability to conduct a complete and effective *Terry* investigation in urban and suburban settings, where police officers are highly unlikely to personally know the background or reputation of a suspect.

Therefore, consistent with this Court's decision in *Hiibel*, common sense dictates that a warrant check of a suspect has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. The execution of a warrant check aids the police in confirming or dispelling their suspicions of criminal activity, or reveals information that the suspect is wanted for another offense or has a record of violence or mental disorder. Clearly, a warrant check is a legitimate tool that helps officers achieve these investigative goals with minimal intrusion. The time needed to complete a computerized records check is negligible and does not fundamentally change the scope or the temporary nature of a *Terry* stop. Therefore, pursuant to this Court's reasoning enunciated in *Hiibel*, a warrant check should be considered a reasonable and necessary component of a law enforcement officer's investigatory authority under *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968) and should not have to be supported by independent reasonable and articulable suspicion of criminal activity.

However, federal and state courts that have considered the propriety of warrant checks under the Fourth Amendment prohibition against unreasonable searches and seizures have come to varying and conflicting conclusions, even when the warrant check is conducted in the context of a valid *Terry* stop. Like the Appellate Court in this case, some courts have determined that the running of a warrant check must be supported by independent reasonable suspicion of some wrongdoing. However, other courts have concluded that a warrant check is *per se* reasonable during a valid *Terry* stop in order to protect an officer's safety. The conflict among the lower courts can be explained by the fact that these courts have failed to consider the threshold question of whether the running of a warrant check constitutes a Fourth Amendment search. Most courts have also failed to recognize that, because the identity of a suspect has an immediate relation to the purpose of a *Terry* stop, the running of a warrant check is a

corollary component of the authority to request a suspect's name, pursuant to *Hiibel*, and also serves to effectuate the rationale and practical demands of the stop. Hence, it is clear that this Court's intervention is needed in order to resolve the conflict that has surfaced across the nation with respect to this important and recurring question of federal law. This Court, in *Hiibel*, implicitly stated that the running of a warrant check should be considered a routine and accepted part of a *Terry* stop. Petitioner urges this Court to use this opportunity to directly address this question in order to ensure uniformity among the lower courts, to provide law enforcement officers with clear guidance and to secure a police officer's ability to conduct a complete and effective *Terry* investigation in urban and suburban settings.

A. THE FEDERAL AND STATE AUTHORITIES THAT HAVE CONSIDERED THE PROPRIETY OF WARRANT CHECKS IN CERTAIN SITUATIONS HAVE FAILED TO CONSIDER THE THRESHOLD QUESTION OF WHETHER THE RUNNING OF A WARRANT CHECK CONSTITUTES A FOURTH AMENDMENT SEARCH.

When determining whether government conduct constitutes a Fourth Amendment search, this Court has uniformly instructed that courts must first consider one threshold question: Has the government's conduct violated a citizen's legitimate expectation of privacy which society is prepared to recognize as justified and reasonable? See *Katz v. United States*, 389 U.S. 347, 361, 19 L. Ed. 2d 576, 588, 88 S. Ct. 507, 517 (1967) (Harlan, J., concurring); *Rakas v. Illinois*, 439 U.S. 128, 143 n. 12, 58 L. Ed. 2d 387, 402 n. 12, 99 S. Ct. 421, 430 n.12 (1978). In the case at bar, the Illinois Appellate Court declared that the running of a warrant check constitutes a Fourth Amendment search, and thus held that police officers cannot run warrant checks without independent reasonable

and articulable suspicion of criminal activity. In making this judgment, the Illinois Appellate Court relied on Illinois Supreme Court authority, namely, the recent case of *People v. Harris*, 207 Ill. 2d 515, 802 N.E. 2d 219 (2003), *pet. for cert. pending* (No. 03-1224), which held that police officers may not run a warrant check on the passenger in a vehicle stopped for a traffic violation unless the officers have independent reasonable and articulable suspicion that the passenger has committed, is committing or is about to commit a crime.

Yet, in rendering these decisions, Illinois courts have failed to consider the threshold question of Fourth Amendment jurisprudence established by this Court in *Katz* and its progeny. Indeed, nowhere in the *Harris* or *Torres* decisions does the majority consider whether a citizen possesses a reasonable expectation of privacy in information ascertained through a warrant check. The courts likewise neglect to consider whether society is prepared to recognize a fugitive's privacy interest in information regarding his status as a fugitive. Illinois courts have simply assumed that a warrant check implicates the Fourth Amendment and, therefore, have recognized an individual's privacy interests in his or her status as a fugitive without thorough consideration of whether the Fourth Amendment was intended to afford such protections.

Illinois, however, does not stand alone in this assumption. The Illinois courts' assertion that a warrant check implicates the Fourth Amendment, and therefore, may only be conducted in the face of a reasonable and articulable suspicion of criminal activity, finds support in precedent from other jurisdictions, which have similarly failed to consider the threshold question set forth in *Katz*. For example, in *Brown v. State*, 124 Md. App. 183, 194, 720 A.2d 1270, 1276 (1998), the Maryland Appellate Court held that, if a person is stopped on suspicion of criminal activity and the investigation reveals that no offense has occurred, the detention may not be extended five minutes in order to facilitate a warrant check without reasonable suspi-

cion of past or current criminal activity. Similarly, in *Sikes v. State*, 323 S.C. 28, 31-32, 448 S.E.2d 560, 563 (1994), the South Carolina Supreme Court held that reasonable suspicion that a car was stolen or driven by an uninsured motorist did not create reasonable suspicion to conduct a warrant check on a passenger.[1]

Conversely, other courts, also neglecting to decide whether the Fourth Amendment is actually implicated in warrant check situations, have nevertheless concluded that a warrant check is *per se* appropriate in a valid *Terry* stop as an indispensable investigatory tool. *United States v. McRae*, 81 F. 3d 1528, 1536 n.6 (10th Cir. 1996); *State v. Ybarra*, 156 Ariz. 275, 276, 751 P.2d 591, 592 (1987), citing *Petty v. State*, 696 S.W.2d 635 (Tex. 1985); *State v. Madrigal*, 65 Wash. App. 279, 283, 827 P.2d 1105, 1107 (1992).[2] In reaching this conclusion, these

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[1] See also *United States v. Boyce*, 351 F.3d 1102, 1107 (11th Cir. 2003) (where warrant check was conducted at conclusion of traffic stop investigation, court held that police officer should have let the defendant go unless he possessed a reasonable and articulable suspicion of some other criminal wrongdoing); *People v. Jackson*, 39 P.3d 1174, 1190 (Colo. 2002) (consensual encounter escalated into improper Fourth Amendment seizure once officer took passenger's driver's license and ran a warrant check without reasonable suspicion of criminal activity); *State v. Johnson*, 805 P.2d 761 (Utah 1991) (running a warrant check on passenger without reasonable suspicion of criminal activity exceeded appropriate scope of detention); *State v. Chelly*, 94 Wash. App. 254, 970 P.2d 376, 277 (1999) (detention can properly be extended to permit warrant check where facts give rise to the belief that the person stopped provided false identity information).

[2] See also *United States v. Christian*, 356 F. 3d 1103, 1107 (9th Cir. 2004) (holding that police officers should be able to learn a suspect's identity and run a warrant check because information

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courts have engaged in a balancing test, weighing the minimally intrusive nature of the stop with the government's interests in crime detection, crime prevention and officer safety. For instance, in *State v. Ybarra*, the Arizona Appellate Court held that warrant checks are "incidental" to a valid investigatory stop and are minimally intrusive because "computerized data storage renders the time for a records check negligible." *Ybarra*, 156 Ariz. at 276, 751 P.2d at 1172. Likewise, in *State v. Madrigal*, the Washington Appellate Court stated that warrant checks are "reasonable" and "routine" in valid investigatory stops and, therefore, do not need to be supported by specific and articulable suspicion. *Madrigal*, 65 Wash. App. at 283, 827 P.2d at 1107. Furthermore, in *United States v. McRae*, the Tenth Circuit Court held that police officers engaged in the lawful detention of a suspect can always run a warrant check. The court reasoned: "Considering the tragedy of the many officers shot during routine traffic stops each year, the almost simultaneous computer check of a person's criminal record, along with his or her license and registration, is reasonable and hardly intrusive." *McRae*, 81 F. 3d at 1536 n.6.

Whether concluding that a warrant check is improper without independent reasonable suspicion, or concluding that a warrant check is always proper in the context of a *Terry* stop, the aforementioned courts have failed to address the fundamental question of whether a citizen, who may be a fugitive from justice, has a legitimate privacy interest, protected by the Fourth Amendment, in information regarding his criminal

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contained therein "could be as important to an officer's safety as knowing that the suspect is carrying a weapon"); *Ohio v. McFarland*, 4 Ohio App. 3d 158, 161, 446 N.E. 2d 1168, 1172 (1982) (based on reasonable suspicion that the suspect was involved in narcotics sales, it was reasonable for officers to detain the suspect in order to run a warrant check).

history. The clear answer is that the Fourth Amendment contemplates no such protection. Any other conclusion ignores the intent of the Framers, as set forth in the plain language of the Fourth Amendment, stating that the amendment is designed to protect citizens from unreasonable searches and seizures of "their persons, houses, papers, and effects." U.S. Const., amend. IV. Information regarding arrest records, pending charges and prior criminal convictions do not fall within any of these categories.

Application of the *Katz* standard to warrant checks makes this conclusion apparent. In order to cross the threshold set forth in *Katz*, it must first be established that individuals have a reasonable expectation of privacy in the information obtained through a warrant check. Records of criminal convictions, arrests, and pending criminal charges, all obtainable through a warrant check, are matters of public record. This Court has held that "interests in privacy fade when the information involved already appears on the public record." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 494-95, 43 L. Ed. 2d 328, 349, 95 S. Ct. 1029, 1046 (1975). Consistent with this holding, courts have uniformly concluded that citizens have no reasonable expectation of privacy in their arrest and criminal records because such records are available for public consumption. See *Cline v. Rogers*, 87 F. 3d 176, 179 (6th Cir. 1996) (a person has no privacy right in his or her criminal history since arrest and conviction information are matters of public record); *Hodge v. James*, 31 F. 3d 157, 166 (4th Cir. 1994) (arrest and criminal records are matters of public record).[3]

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[3] See also *Paul P. v. Verniero*, 170 F. 3d. 396, 403 (3rd Cir. 1998) (holding that "arrest records and related information" are not protected by the Fourth Amendment); *Walls v. City of Petersberg*, 895 F. 2d 188, 193-94 (4th Cir. 1990) (constitutional right to privacy is not violated where an individual is required to disclose information freely available in public records); *Trade Waste Management Association Inc. v. Hughey*, 780 F. 2d 221, 234 (3rd

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As the dissent in *People v. Harris* cogently stated while asserting their position that the Fourth Amendment was plainly not implicated in the running of a warrant check:

> A warrant check is simply a computerized retrieval of information in the public record - information which indicates whether a court has entered a written order commanding the arrest of a specific person. (citations). Thus, a warrant check is never intrusive in the way that police questioning of a detained passenger can be. A warrant check involves no face-to-face exchange and does not even require the passenger's participation. It is never inquisitorial, confrontational, or suggestive of official interrogation. It does not invite, much less compel, an incriminating response. Further, the passenger has no reasonable expectation of privacy in the information retrieved during a warrant check, whether the police suspect the passenger of criminal activity or not. Accordingly, unless the warrant check impermissibly prolongs the passenger's detention—which was not the case here—no Fourth Amendment concerns arise." *Harris*, 207 Ill. 2d at 536-537, 802 N.E.2d at 232-33 (Fitzgerald, J., dissenting).

The Sixth Circuit recently subscribed to this same rationale in an unpublished opinion in *United States v. $14,000.00 in United States Currency*, No. 98-4380, 2000 U.S. App. Lexis 2429 (6th Cir. Feb. 14, 2000). There, the claimant was a passenger in a vehicle that was stopped because of a license plate violation. The officer ran a warrant check, which revealed that the claimant had prior drug convictions. After further questioning, the officer obtained consent to search the car from the car's driver, and ultimately conducted a pat down search on

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(...continued)
Cir. 1985) (records of criminal convictions and pending criminal charges are public by definition).

both the driver and the claimant. The searches revealed quantities of marijuana and a large amount of cash. On appeal, the claimant argued that his Fourth Amendment rights were violated when the officer ran the warrant check. The Sixth Circuit disagreed, reasoning that the Fourth Amendment was not implicated because the claimant had no legitimate expectation of privacy in computerized criminal history records. "We decline to find a legitimate expectation of privacy in computer criminal history records that are themselves derived (at least as concerns this case) from public records, and that are maintained for the express purpose of facilitating nearly instantaneous access to such information by law enforcement personnel in the performance of their duties." *U.S. v. $14,000*, No. 98-4380, 2000 U.S. App. Lexis 2429, at 7.

Even assuming, *arguendo*, that citizens have a privacy interest in warrant checks, the conclusion that the Fourth Amendment protects this interest does not pass muster. As this Court has repeatedly made clear, "the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise 'illegitimate.' (citations). To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is 'prepared to recognize as legitimate.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 338, 83 L. Ed. 2d 720, 732, 105 S. Ct. 733, 741 (1985). It is unreasonable to conclude that a fugitive has a legitimate right to privacy regarding his status as a fugitive when he is out in public, and it is outrageous to conclude that society would recognize such a privacy interest as reasonable and justified.

Society has a compelling interest in keeping criminals off the streets and in keeping citizens safe. Citizens are generally kept safe through the efforts of law enforcement, and police officers are best able to protect citizens when they have access to necessary and useful public record information, such as that available through a warrant check, about individuals out in public who may be dangerous. The recognition of a privacy

interest in information contained in a warrant check undermines society's interest in public safety, places police officers in danger, and comes at a heavy cost to our communities. This danger is evident in the case at bar. To conclude otherwise would have placed the officers in the untenable position of walking away from a domestic situation without being afforded the opportunity to check the public records to ascertain whether respondent indeed posed a danger to the victim. Respondent was a fugitive from justice who was out in public behaving in an aggressive manner, with a loaded and cocked semiautomatic weapon concealed in the console of his car. If police officers had not run a warrant check on respondent, they would not have detected his fugitive status, nor would they have found the unlawful weapon. Respondent's interest in his status as a fugitive simply cannot be deemed legitimate in light of society's interest in finding fugitives, particularly those who are armed and dangerous, and bringing them to justice.

A finding that society is prepared to recognize a fugitive's privacy interest in his fugitive status is not only dangerous, it sends a confusing message to the public. It is well-settled that Fourth Amendment protections are trumped by a magistrate's finding of probable cause. See *Steagald v. United States*, 451 U.S. 204, 221-22, 68 L. Ed. 2d 38, 51, 101 S. Ct. 1642, 1652 (1981). Once respondent chose to evade authorities and disregard his court date, he knew that the police would be looking for him and that he would be immediately and legitimately arrested upon detection. The police officers had probable cause to believe that he committed the crime for which the warrant was issued and probable cause to believe that he was willfully evading authorities. Moreover, respondent could be prosecuted at any time for the underlying offense. It is unreasonable to require society to extend a privacy interest to respondent in information regarding the public record of his charged offense and warrant, for which police have probable cause to arrest him. This is particularly true because any privacy interest he possesses, while it may be

subjectively held, was certainly not legitimate in light of the magistrate's decision to issue an arrest warrant for respondent.

As this Court explained in *Rakas*:

> Obviously, *** a 'legitimate' expectation of privacy by definition means more than a subjective expectation of not being discovered. A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.' His presence, in the words of *Jones*, 362 U.S. at 267, is 'wrongful'; his expectation is not one that society is prepared to recognize as 'reasonable'." *Rakas*, 439 U.S. at 143 n. 12, 58 L. Ed. 2d at 402 n. 12, 99 S. Ct. at 430 n.12.

Fugitives subject to an arrest warrant simply have no legitimate expectation of privacy while evading criminal prosecution because they would possess no expectation of privacy if they were caught and ultimately confined in jail. *In re York*, 9 Cal. 4th 1133, 1150, 892 P.2d 804, 813 (1995); *State v. Thang*, 103 Wash. App. 660, 669, 13 P.3d 1098, 1103 (2000), *rev'd on other grounds*, 103 Wn. 2d 630, 41 P.3d 1159 (2001). The recognition of a privacy interest under these circumstances borders on the absurd, as society simply cannot be prepared to legitimatize a privacy interest which places the citizenry and law enforcement in danger and rewards criminal defendants for evading the criminal justice system.

B. ALTERNATIVELY, EVEN IF THIS COURT WERE TO CONCLUDE THAT THE RUNNING OF A WARRANT CHECK IMPLICATES THE FOURTH AMENDMENT, UNDER *HIIBEL V. NEVADA*, POLICE OFFICERS DO NOT NEED INDEPENDENT REASONABLE SUSPICION TO CONDUCT A WARRANT CHECK OF A SUSPECT'S NAME THAT WAS LEGITIMATELY OBTAINED DURING A VALID *TERRY* STOP, BECAUSE, ABSENT A WARRANT CHECK, THE AUTHORITY TO ASCERTAIN A SUSPECT'S NAME IS POINTLESS UNLESS A POLICE OFFICER PERSONALLY KNOWS THE BACKGROUND OF THE SUSPECT.

Assuming, *arguendo,* that the Fourth Amendment is implicated when police officers run a warrant check, the Illinois Appellate Court's decision in the case at bar would still be erroneous because a warrant check is always reasonably related to the purpose of a valid *Terry* stop. It is the least intrusive way to confirm or dispel suspicion, and should, thus, be considered routine and acceptable without any additional reasonable suspicion beyond that which justified the initial *Terry* stop. The requirement imposed by the Illinois Appellate Court, that police officers must have an independent reasonable and articulable suspicion of criminal activity to conduct the warrant check, runs afoul of fundamental Fourth Amendment principles of reasonableness and ignores legitimate governmental interests in officer and citizen safety and the detection and prevention of crime.

It is well settled that the propriety of any search or seizure rests on the fundamental principle of reasonableness. In deciding whether a particular governmental action is reasonable and complies with the Fourth Amendment, this Court first inquires whether the action was regarded as a lawful search and seizure under the common law. *Wyoming v. Houghton*, 526 U.S. 295, 299-300, 143 L. Ed. 2d 408, 414, 119

S. Ct. 1297, 1300 (1999). Where that inquiry yields no answer, this Court must then evaluate the search or seizure under traditional standards of reasonableness and must balance the intrusion upon an individual's privacy against the degree to which such intrusion is needed for the promotion of legitimate governmental interests. *Houghton*, 526 U.S. at 299-300, 143 L. Ed. 2d at 414, 119 S. Ct. at 1300.

A review of the common law, of course, does not directly answer the question of whether the running of a warrant check would have been considered lawful by the Framers of the Fourth Amendment, as this technology was obviously unavailable when the amendment was crafted. Therefore, assuming for the sake of argument that common law does not, by itself, answer the question of whether a warrant check complies with the Fourth Amendment[4], it is incumbent upon this Court to

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[4] The common law does establishes that, at the time the Framers crafted the Fourth Amendment, society had a compelling interest in imposing stiff penalties on those who intentionally evaded criminal prosecution. William Blackstone's Commentaries on the Laws of England supports the determination that, in the 1700's, the common law would not have recognized a subjective expectation of privacy in a person's fugitive status. In his commentaries, Blackstone specifically noted:

> "For flight also, on an accusation of treason, felony, or even petit larceny, whether the party be found guilty or acquitted, if the jury finds flight, the party shall forfeit his goods or chattels: for the very flight is an offence, carrying with it a strong presumption of guilt, and is at least an endeavour to elude and stifle the course of justice prescribed." William Blackstone, 4 Commentaries on the Laws of England 380 (1765-1769).

It is evident that at the time the Fourth Amendment was framed, a repugnance to flight was so embedded in society that those who fled faced harsh and sweeping legal consequences. Indeed, the fact that a fugitive, whether found guilty or acquitted of the underlying offense, lost an ownership or possessory

(continued...)

evaluate warrant checks under traditional standards of reasonableness, weighing an individual's expectation of privacy against the government's interest in rooting out fugitives and bringing them to justice. See *Hensley*, 469 U.S. at 228-29, 83 L. Ed. 2d at 612, 105 S. Ct. at 680. In weighing the question now presented, this Court does not need to look much farther than its own recent decision in *Hiibel v. Nevada*, and the seminal case of *Terry v. Ohio*.

In *Hiibel*, this Court implied that the running of a warrant check was *per se* proper in the course of a valid investigatory stop. There, this Court stated that obtaining a suspect's identity is a "routine" and "accepted" part of a *Terry* stop, and held that the government can statutorily require a suspect to disclose his identity without violating his Fourth Amendment rights. *Hiibel*, 159 L. Ed. 2d at 303-04, 124 S. Ct. at 2458. This Court determined that the request for identity has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. This Court based its decision on the rationale that an individual's privacy right to information regarding his name was outweighed by the important government interest in obtaining identity information, as "knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder." *Hiibel*, 159 L. Ed. 2d at 303, 124 S. Ct. at 2458.

However, as the *Hiibel* Court undoubtedly knew, knowledge of an individual's identity alone will not divulge information regarding his fugitive status, mental health issues or history of violence. The only way that information would come to light is through a warrant check. Thus, in recognizing that the ability to obtain information of this kind constituted a legiti-

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(...continued)
interest in his goods or chattels provides a clear indication that the common law would not recognize a person's subjective expectation of privacy in his fugitive status.

mate government interest which trumped Fourth Amendment protections, this Court implicitly recognized that a warrant check, like ascertaining a name, is a "routine" and "accepted" part of a *Terry* stop.

Unless the holding in *Hiibel* is intended to be strictly limited to rural areas, where law enforcement personnel are likely to personally know, or at least know of each person detained, the *Hiibel* rule logically must extend to the running of warrant checks. Police officers in large urban or suburban areas simply cannot have knowledge of a suspect's fugitive status, propensity for violence or history of mental illness without a warrant check to provide this information. In order for *Hiibel* to have any practical effect, once the police have legitimately obtained the name of a suspect detained in a valid *Terry* stop, the police officers must be able to run a warrant check. Like the request for identity, the running of warrant check on a name that was legitimately obtained has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. Any holding to the contrary would undermine the legitimacy of the governmental interests recognized in *Hiibel*.

Thus, decisions made in Illinois, as well as other jurisdictions throughout the country, which require a separate and distinct reasonable suspicion of criminal activity during the course of a *Terry* stop to legitimatize a warrant check of a detained suspect are contrary to this Court's precedent. See *Harris*, 207 Ill. 2d 515, 802 N.E. 2d 219, *pet. for cert. pending* (No. 03-1224); *Torres*, 347 Ill. App. 3d 252, 807 N.E.2d 654.[5]

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[5] See also *United States v. Christian*, 356 F. 3d 1103 (9th Cir. 2004); *United States v. Boyce*, 351 F. 3d 1102 (11th Cir. 2003); *People v. Jackson*, 39 P.3d 1174 (Colo. 2002); *Sikes v. State*, 323 S.C. 28, 448 S.E. 2d 560 (1994); *State v. Johnson*, 805 P.2d 761 (Utah 1991); *Brown v. State*, 124 Md. App. 183, 720 A.2d 1270 (1998); *State v. Chelly*, 94 Wash. App. 254, 970 P. 2d 376 (1999).

Not only do these cases, which includes the instant cause, run afoul of the principles set forth in *Hiibel*, they likewise deviate from this Court's mandate in *Terry v. Ohio*. In *Terry*, this Court stated that the propriety of a Fourth Amendment search should be determined by inquiring whether the officer's action was justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *Terry*, 392 U.S. at 20, 20 L. Ed. at 905, 88 S. Ct. at 1879. When the *Terry* test is applied to the running of warrant checks pursuant to a valid *Terry* stop, it becomes readily apparent that warrant checks will be reasonably related to the circumstances justifying the initial interference in nearly every circumstance. A warrant check, like ascertaining a name, will always aid in confirming or dispelling the suspicion which formed the basis of the initial stop and will likewise aid in confirming or dispelling an officer's concerns regarding his own personal safety and the safety of the public.

As this Court recognized in *Hiibel*, it is necessary for police officers to learn whether a suspect stopped pursuant to *Terry* is wanted for another offense, is known to be armed, dangerous, violent or mentally ill. The need for this information to alleviate reasonable suspicion is demonstrated by the facts of the case at bar. Here, police officers approached respondent because they saw him, "a very large male," with his arms "flying" in the direction of "a very young smaller female" who was sitting in a "very submissive" position. (Appendix C, App. 36, Appendix A, App. 2). After speaking to respondent and his girlfriend, they learned that the couple were fighting over an extremely volatile issue—respondent's alleged infidelity. (Appendix A, App. 3). The officers reasonably suspected that a domestic violence altercation had taken place or was about to take place, and needed to investigate further to ensure their safety, as well as the safety of the potential victim.

The least intrusive, and most reasonable way to dispel the officers' suspicions was to run a warrant check. The check

would reveal whether the suspect was wanted for any other offenses, such as violating an order of protection. It would likewise reveal whether the suspect had a history of violence or mental illness and whether he could potentially be armed. Significantly, this pertinent information could be obtained without having to question the suspect, thus limiting his exposure to the danger of self-incrimination. Notably, the computer check of public records does not require any contact between the officers and the suspect, nor any participation from the suspect whatsoever. Moreover, the information needed to dispel or confirm the officers' concerns could be obtained in a matter of seconds, through an unintrusive computer check. Contrary to the Illinois Appellate Court's determination in this case, the minimal time it took to conduct the warrant check did not fundamentally change the scope or the temporary nature of the *Terry* stop. It was simply part and parcel of the *Terry* stop itself and did not convert it into something other than a legitimate *Terry* stop under the Fourth Amendment.[6] Hence, in the instant case, the warrant check was sufficiently unintrusive to be constitutionally permissible under *Terry* in light of the compelling societal interests and respondent's lack of a reasonable expectation of privacy in the public record of the arrest warrant issued against him.

As stated previously herein, when determining whether a search is valid under the Fourth Amendment, courts are instructed to remain focused on fundamental principles of reasonableness while weighing the intrusion upon an individual's privacy interest against the degree to which such intrusion is needed for the promotion of legitimate governmental interests. *Houghton*, 526 U.S. at 299-300, 143 L. Ed. 2d at 414,

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[6] The question before this Court does not include a situation where the running of a warrant check unreasonably extended the duration or changed the nature of the *Terry* stop, *i.e.* where a suspect is held for an inordinate amount of time because the computer system is down or where officers take the suspect to the police station to conduct the warrant check.

179 S. Ct. at 1300. This case makes clear that the running of a warrant check is imminently reasonable and should be considered a *per se* acceptable part of every *Terry* stop. A warrant check provides police officers with a minimally intrusive mechanism for confirming or dispelling the initial reasonable suspicion which gave rise to the *Terry* stop at the outset of the police/suspect encounter. Any other conclusion can only be characterized as unreasonable and one which society would be unwilling to accept as justified. Indeed, it is doubtful that society is willing to declare that the minimal intrusion into a suspect's criminal history resulting from a warrant check trumps society's interest in good, thorough police work which ultimately keeps citizens safe with great benefit to law enforcement and little detriment to criminal suspects.

Nevertheless, until this Court makes an explicit, rather than implicit finding with respect to warrant checks in the context of *Terry* stops, courts may continue to erroneously find that a distinct reasonable and articulable suspicion of criminal activity is required before a warrant check can be lawfully conducted. This is precisely the error committed by the Appellate Court in the instant case. This, of course, would be in derogation of *Hiibel*, *Terry*, and other case law throughout the country which conforms to the principles these cases have espoused. See, *e.g. McRae*, 81 F. 3d 1528; *Madrigal*, 65 Wash. App. 279, 827 P. 2d 1105; *Ybarra*, 156 Ariz. 276, 751 P. 2d 592. This creates an untenable situation for law enforcement officials on a daily basis. The current state of the law makes it difficult for police officers to run a warrant check, and subsequently apprehend a fugitive, without fear that their conduct may eventually be characterized as a Fourth Amendment violation. This sort of uncertainty can only result in the type of police work this Court warned against in *Adams v. Williams*, 407 U.S. 143, 145, 32 L. Ed. 2d 612, 616-17, 92 S. Ct. 1921, 1923 (1972), when it stated:

> "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary

> for probable cause to arrest to simply shrug his shoulders and allow crime to occur or a criminal to escape. On the contrary, *Terry* recognized that it may be the essence of good police work to adopt an intermediate response."

Officers should not have to ignore the existence of the initial reasonable and articulable suspicion that a suspect is involved in criminal activity and hope that other factors surface that establish independent reasonable and articulable suspicion before they are authorized to run a warrant check on a suspect. Such an interpretation of the Fourth Amendment is not only absurd, but it will certainly have a devastating impact on law and order and the safety of our communities, particularly in the crime-plagued urban and suburban communities.

C. THE ILLINOIS APPELLATE COURT'S OPINION CONCERNS AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW WHICH SHOULD BE DECIDED BY THIS COURT TO GIVE NEEDED GUIDANCE TO LOWER COURTS AND LAW ENFORCEMENT OFFICIALS THROUGHOUT OUR NATION.

It is clear that both State and Federal authorities have created a confusing situation for police officers and courts alike with regard to the appropriate use of the warrant check in the context of a valid *Terry* stop. Given the fact that warrant checks are frequently conducted by police officers, combined with the fact that the information obtained or not obtained through a warrant check can impact an officer's safety, as well as the safety of the individuals subject to the warrant check and others in the community, the existing conflict warrants swift resolution by this Court. The present case provides this Court with the ideal opportunity to consider and resolve this pressing issue.

Significantly, the facts of this case make it particularly ripe for this Court's consideration because respondent was not merely a bystander present during a criminal investigation who became the subject of a warrant check. Rather, respondent was the actual individual suspected of engaging in criminal activity, namely, domestic violence, an extremely serious and dangerous offense. These facts are significant because, under the precedent set by the Illinois Appellate Court in this case, police officers can no longer freely run a warrant check on an individual they suspect of criminal activity for safety reasons or in the course of good police investigation. Instead, officers must first assess whether they have a specific and articulable reasonable suspicion to run the warrant check. This encompasses an assessment of whether the reasonable suspicion warranting the initial stop has been dissipated by some external factor, such as a potential domestic violence victim reporting that she is "okay" in the presence of her would-be abuser, who is within arms' reach of a loaded and cocked semi-automatic weapon.[7]

Police officers are simply being prohibited from doing good police work, and this prohibition presents a grave danger to them as well as the communities they serve. This Court has stressed that "reasonable suspicion" is a commonsense, nontechnical concept that deals with "the factual and practical considerations of everyday life in which reasonable and prudent men, not legal technicians act." *Ornelas v. United States*, 517 U.S. 690, 695, 116 S. Ct. 1657, 1661, 134 L. Ed. 2d 911, 918 (1996), *quoting Illinois v. Gates*, 462 U.S. 213, 231, 76 L. Ed. 2d 527, 544, 103 S. Ct. 2317, 2328 (1983). However, the Appellate Court's dissipation analysis virtually requires that police officers become legal technicians by forcing them to ignore the everyday reality that domestic violence victims often lie to authorities about the abuse they suffer at the hands of their domestic partners.

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[7] The Appellate Court's finding that the *Terry* stop was dissipated by Ms. Cordero's indication that she was "okay" is rendered fundamentally incorrect by *Hiibel*.

As stated herein, this Court has recently recognized, in *Hiibel v. Nevada*, the need for police officers to have the ability to conduct relevant and necessary investigation. This Court held that law enforcement officers with a reasonable suspicion of criminal activity must be able to detain a suspect for a brief time to obtain additional information. *Hiibel*, 159 L. Ed. 2d at 302-03, 124 S. Ct. at 2458. In that vein, this Court declared that obtaining a suspect's identity was an integral part of that process and implied that running a warrant check was likewise a necessary and integral part. *Hiibel*, 159 L. Ed. 2d at 302-03, 124 S. Ct. at 2458. As this Court cogently explained:

> "Knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder. On the other hand, knowing identity may help clear a suspect and allow the police to concentrate their efforts elsewhere. *Identity may prove particularly important in cases such as this, where police are investigating what appears to be a domestic assault. Officers called to investigate domestic disputes need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim.*" (Emphasis added.) *Hiibel*, 159 L. Ed. 2d at 303, 124 S. Ct. at 2458.

The rationale applied in *Hiibel* with respect to identity information applies with respect to warrant checks, and is equally compelling because, like a name check, a warrant check is an essential part of police investigation. *Hiibel*, 159 L. Ed. 2d at 302, 124 S. Ct. at 2458. A warrant check should, therefore, be considered a reasonable and necessary component of a law enforcement officer's investigatory authority under *Terry* and should not have to be supported by independent reasonable and articulable suspicion of criminal activity.

This Court should grant certiorari to resolve this important and recurring question of federal law in order to ensure uniformity among the courts, to provide law enforcement

officers with clear guidance and to secure a police officer's ability to conduct a complete and effective *Terry* investigation in urban and suburban areas.

CONCLUSION

For all the foregoing reasons, the Petitioner respectfully prays that this Honorable Court grant the instant petition for Writ of Certiorari to review the judgment of the Illinois Appellate Court. In the alternative, this petition should be held pending consideration of the petition for Writ of Certiorari in *Illinois v. Harris*, No. 03-1224.

Respectfully submitted,

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APPENDIX A

**Opinion of the Illinois Appellate Court,
First District, Fifth Division
Docket No. 1-02-2579, Filed March 19, 2004,
The People of the State of Illinois, Appellee, v.
Jose Torres, Appellant.**

FIFTH DIVISION
Filed: 3/19/04

No. 1-02-2579

The People of the State of Illinois,	)	
	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
V.	)	No. 02 CR 5209
	)	
Jose Torres,	)	Honorable
	)	**Catherine Haberkorn,**
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REID delivered the opinion of the court:

Following a stipulated bench trial, the defendant, Jose Torres, was found guilty of two counts of aggravated unlawful use of a weapon and sentenced to serve 18 months' probation. On appeal, Torres argues that the trial court should be reversed because: (1) it erred when it denied his motion to suppress evidence because the arresting officers had no legal justification to remove him from his vehicle, pat him down, demand his identification and conduct a name check and (2) the aggravated unlawful use of a

weapon statute is unconstitutional and violates due process because it does not require a culpable mental state. For the reasons that follow, we reverse the decision of the trial court.

BACKGROUND

Torres was charged by information with two counts of aggravated unlawful use of a weapon (UUW) under section 24-1.6(a) of the Criminal Code of 1961 (720 ILCS 5/24-1.6(a) (West 2002)). Prior to trial, Torres filed a pretrial motion to suppress evidence. In the motion, Torres claimed that the arresting officers lacked the requisite probable cause to effectuate his arrest and requested that the trial court find that his arrest was illegal and subsequently suppress the evidence. The trial court held an evidentiary hearing on the motion.

At the hearing, Officer Joe Kurpiel testified on direct examination that he and his partner were in the area of 4243 West Lawrence Avenue, in Chicago, Illinois, on February 6, 2002, at approximately 10:10 p.m. At that time, the officers were in a police vehicle and conducting a routine patrol.

As they were driving, Kurpiel testified that he saw a parked truck in a Clark gas station. In the vehicle, he saw what he characterized as a domestic altercation taking place between Torres and a woman. Kurpiel indicated that it appeared that Torres and the woman were having more than just a conversation. Kurpiel explained that he saw "hands flying" and the female "looking very submissive." When shown a copy of the police report that he made, Kurpiel testified that this information did not appear in the report.

After he and his partner approached the parked truck, Kurpiel testified that he spoke to the female passenger and

his partner spoke to Torres, who was in the driver's seat. Kurpiel said that he asked the female if "everything was okay." and that she said "yes." Kurpiel said that she informed him that Torres was her boyfriend and that the two were having an argument because he had been seeing another woman. She explained that the two were trying to work things out.

Kurpiel said that he never saw Torres strike the female or do anything of that nature. Furthermore, Kurpiel testified that Torres never committed a crime in his presence. However, at this time, the two officers did not leave. By now, Kurpiel's partner had Torres out of the vehicle and was asking Kurpiel to run a name check on him. When Kurpiel ran the name check on Torres, it revealed that Torres had a warrant for driving under the influence (DUI).

The officers then placed Torres under arrest and conducted a search of his person and his vehicle. Their search revealed a gun magazine in Torres' pocket and a fully loaded and cocked handgun, which was in the console of the vehicle.

On redirect, Kurpiel testified that at the time that he asked the female passenger if everything was okay, his partner had already removed Torres from the vehicle and patted him down. He stated that this was done so that she could speak more freely to the officers. Additionally, Kurpiel said that he did not inform his partner that she had already told him that everything was all right until after he had run the name check on Torres. Kurpiel also testified that, prior to his running the name check, he did not recall his partner finding the gun clip on Torres.

Rosea Cordero testified that on February 6, 2002, at approximately 10 p.m., she and Torres were in his truck, which was parked in a Clark gas station. Cordero acknowledged that she was Torres' girlfriend and testified that she

was driving his truck because Torres' license was suspended. Cordero said that she had pulled into the gas station so that she could buy some cigarettes.

She then pulled over to where the pay phones were so that she and Torres could figure out where they were going next. She said that the two were not having an argument. Cordero testified that Torres was not waiving his hands and that she did not feel threatened by him at anytime while they were sitting in the vehicle.

At this time, an unmarked police car pulled up behind them. One of the officers came over to the driver's side where she was sitting. She stated that she rolled down her window, and the officer asked her if everything was "okay." She told him "yes" and the officer then asked her for her driver's license and insurance.

The officer then asked Cordero what the two of them were doing there. He returned her license and insurance card and asked her to step out of the car. Cordero said that she was the first person to exit the truck. After she exited the vehicle, the officer made a comment about there being problems in the neighborhood with drugs and started searching the car without anyone's permission.

Torres testified that on the evening of February 6, 2002, Cordero, who was driving his truck, picked him up at his home. Torres had previously lent his truck to Cordero so that she could drive to work. At approximately 10:10 p.m., Cordero drove to the Clark gas station on Lawrence and Kildare Avenues. Torres said that while he and Cordero were in the truck, they were having a discussion regarding where they should go next. Torres said that they were not having a loud discussion and that he was not waiving his arms while they spoke. At this time, an unmarked police vehicle approached his truck.

An officer exited the unmarked vehicle, walked up to his truck, knocked on the driver's side window and asked

Cordero if she was "okay." She told him "yes." The officer then asked Cordero for her license and proof of insurance. She was then asked to exit the vehicle.

At this point, another officer asked Torres to exit the vehicle as well. This officer then patted Torres down. Afterwards, the officer then began searching his vehicle, where he found a gun and a gun clip. Torres admitted that the gun belonged to him and testified that he informed the officers of this. At this point, Torres said that he was placed under arrest.

Torres testified that after the gun was found, the officers placed him in their vehicle and at that point asked him for his name. The officers then ran a name check, at which time they learned that Torres had a warrant for a DUI.

After the evidentiary hearing, the trial court denied Torres' motion to suppress the evidence. The trial court found that the officers observed a heated discussion between Torres and Cordero. The trial court also determined that the officers had a right to investigate and "to do a name check if in fact a warrant existed."

After the hearing on the motion to suppress the evidence, Torres requested to have a bench trial. Following a stipulated bench trial, Torres was found guilty of two counts of aggravated UUW and was subsequently sentenced to serve 18 months' probation. On July 2, 2002, Torres filed a motion for a new trial, which was denied. On July 23, 2002, Torres timely filed his notice of appeal.

ANALYSIS

The issue that we must decide on review is whether the trial court erred when it denied Torres' motion to suppress the evidence.

Torres maintains that the arresting officers conducted a Terry stop when they approached his vehicle, stationed

themselves on both sides by its doors, and ordered him to exit the truck and to subsequently identify himself. Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). Torres contends that the officers, who approached the vehicle because they believed that a domestic dispute was occurring, had a legal obligation to terminate the encounter as soon as Cordero informed them that she was not in any danger.

Torres contends that, after Cordero informed them that she was all right, the officers lacked a reasonable suspicion that any criminal activity was occurring or about to occur and that they simply should have left the couple alone. Torres maintains the arresting officers had no right to detain and question him after they determined that a domestic dispute was not occurring and that Cordero was not in danger. Consequently, he argues that the officers' subsequent actions of running a name check on him, then searching his person and vehicle, amounted to an illegal search and seizure. As such, Torres argues, his constitutional rights were violated and the trial court erred when it failed to quash his subsequent arrest and to suppress the handgun and other evidence resulting from the illegal search and seizure.

When a reviewing court considers a ruling on a motion to suppress involving a question of probable cause or reasonable suspicion, the court should review the trial court's findings of historical facts only for clear error and must give due weight to inferences drawn from those facts. People v. Sorenson, 196 Ill. 2d 425, 431 (2001), citing Ornelas v. United States, 517 U.S. 690, 699, 134 L. Ed. 2d 911, 920, 116 S. Ct. 1657, 1663 (1996). Consequently, the trial court's factual findings will be reversed only if they are against the manifest weight of the evidence. Sorenson, 196 Ill. 2d at 431. However, we review de novo the trial court's ultimate determination of a defendant's legal challenge to the denial of his motion to suppress. Sorenson, 196 Ill. 2d at 431. The

key facts pertaining to the detention and search of defendant are not in dispute. Thus, we review de novo whether those facts justified the denial of defendant's motion to suppress.

"In a motion to suppress, the burden is on the defendant to establish that the search or seizure was unreasonable or unlawful. People v. Scott, 249 Ill. App. 3d 597, 600, 619 N.E.2d 809 (1993). The defendant must establish a prima facie case that the police acted without a warrant and that the defendant was doing nothing to justify the intrusion by the police at the time of the stop or arrest. People v. Ertl, 292 Ill. App. 3d, 863, 868, 686 N.E.2d 738 (1997). Once the defendant has made a prima facie showing, the burden of going forward with evidence to justify the stop or arrest shifts to the State. People v. Drake, 288 Ill. App. 3d 963, 967, 683 N.E.2d 1215 (1997).

An exception to the warrant requirement is the Terry stop, which is invoked here. Under Terry v. Ohio, 392 U.S. 1, 21-22, 20 L. Ed. 2d 889, 906, 88 S. Ct. 1868, 1880 (1968), the fourth amendment to the United States Constitution permits an officer to make a valid investigatory stop of a person without probable cause to arrest when there is a reasonable suspicion of criminal activity. People v. Branch, 295 Ill. App. 3d 110, 112, 692 N.E.2d 398 (1998). 'For the police to justify such a detention, they must point to specific, articulable facts which, when taken together with natural inferences, make the intrusion reasonable-such as when the officer observes unusual conduct which leads him reasonably to conclude in the light of his experience that criminal activity may be afoot.' Ertl, 292 Ill. App. 3d at 868-69." People v. Juarbe, 318 Ill. App. 3d 1040, 1049-50 (2001).

"There are, theoretically, three tiers of police-citizen encounters. (United States v. Berry (5th Cir. 1982), 670 F.2d 583, 591.) One tier involves an arrest of a citizen, which action must be supported by probable cause; other-

wise, the fourth amendment prohibition against unreasonable seizures is violated. (Henry v. United States (1959), 361 U.S. 98, 4 L. Ed. 2d 134, 80 S. Ct. 168.) The next tier involves a so-called 'Terry' stop, a brief seizure that must be supported by a reasonable suspicion of criminal activity to be within acceptable fourth amendment boundaries. (Terry v. Ohio (1968), 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868.) The last tier involves no coercion or detention and therefore does not involve a seizure. This tier is commonly known as the community caretaking function or public safety function. The Supreme Court elaborated on this level of police intrusion in Terry when it noted that '[o]bviously, not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred.' Terry v. Ohio (1968), 392 U.S. at 19 n.16, 20 L. Ed. 2d at 905 n.16, 88 S. Ct. at 1879 n.16; see also Cady v. Dombrowski (1973), 413 U.S. 433, 441, 37 L. Ed. 2d 706, 714-15, 93 S. Ct. 2523, 2528 (local police officers 'frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute')." People v. Murray, 137 Ill. 2d 382, 387-88 (1990). "The encounters in this tier 'involve [] no coercion or detention and therefore do [] not involve a seizure.' Murray, 137 Ill. 2d at 387. Accordingly, consensual encounters do not implicate the fourth amendment." People v. Gherna, 203 Ill. 2d 165, 177 (2003).

"For purposes of the fourth amendment, an individual is 'seized' when an officer '" by means of physical force or show of authority, has in some way restrained the liberty of a citizen."' Florida v. Bostick, 501 U.S. 429, 434, 115 L. Ed. 2d 389, 398, Ill. S. Ct. 2382, 2386 (1991), quoting Terry, 392

U.S. at 19 n.16, 20 L. Ed. 2d at 905 n.16, 88 S. Ct. at 1879 n.16. It is well settled that a seizure does not occur simply because a law enforcement officer approaches an individual and puts questions to that person if he or she is willing to listen. United States v. Drayton, 536 U.S. 194, 200, 153 L. Ed. 2d 242, 251, 122 S. Ct. 2105, 2110 (2002); Florida v. Royer, 460 U.S. 491, 497, 75 L. Ed. 2d 229, 236, 103 S. Ct. 1319, 1324 (1983) (plurality op.). 'So long as a reasonable person would feel free "to disregard the police and go about his business," [citation], the encounter is consensual and no reasonable suspicion is required.' Bostick, 501 U.S. at 434, 115 L. Ed. 2d at 398, 111 S. Ct. at 2386, quoting California v. Hodari D., 499 U.S. 621, 628, 113 L. Ed. 2d 690, 698, 111 S. Ct. 1547, 1552 (1991); see also Michiaan v. Chesternut 486 U.S. 567, 569, 100 L. Ed. 2d 565, 569, 108 S. Ct. 1975, 1977 (1988). However, when, taking into account '"all the circumstances surrounding the incident"' (Immigration & Naturalization Service v. Delgado, 466 U.S. 210, 215, 80 L. Ed. 2d 247, 255, 104 S. Ct. 1758, 1762 (1984), quoting United States v. Mendenhall, 446 U.S. 544, 554, 64 L. Ed. 2d 497, 509, 100 S. Ct. 1870, 1877 (1980)), the conduct of the police would lead a reasonable innocent person under identical circumstances to believe that he or she was not 'free to decline the officers' requests or otherwise terminate the encounter' (Bostick, 501 U.S. at 436, 115 L. Ed. 2d at 400, 111 S. Ct. at 2387), that person is seized. Accordingly, this analysis hinges on an objective evaluation of the police conduct and not upon the subjective perception of the individual approached. Hodari D., 499 U.S. at 628, 113 L. Ed. 2d at 698, 111 S. Ct. at 1551." Gherna, 203 Ill. 2d at 177-78.

Here, the State maintains that instead of conducting a Terry stop, the police were conducting a community caretaking function when they approached Torres' vehicle. Torres, on the other hand, argues that the police officers conducted a Terry stop when they approached his vehicle,

stationed themselves besides the truck's doors, and ordered him to exit the vehicle and to identify himself.

Accordingly, we must initially determine whether a seizure occurred, or put another way, whether the arresting officers conducted what amounted to a Terry stop after they approached Torres' vehicle. We find that People v. Gherna, 203 Ill. 2d 165, 180 (2003), is very instructive.

In Gherna, the defendant was charged with one count of possession of a controlled substance. Prior to trial, the defendant filed a motion to suppress the evidence wherein she alleged that she was searched without a warrant and proper probable cause, which was a violation of her fourth amendment rights.

At the preliminary hearing on the motion to suppress, the following information was adduced. The two arresting officers approached a vehicle which was driven by defendant. The officers were on bicycle patrol.

At the time, the officers observed two females sitting in a pickup truck parked in an apartment complex parking lot. One of the officers testified that he and his partner were riding by the truck when he observed a bottle of beer sitting in a cup holder that was located between the two females.

The officer stated that because the passenger of the vehicle appeared to be very young, he and his partner suspected the possibility of underage drinking. He testified that he and his partner stopped to identify both of the people in the truck. Upon doing so, the officer determined that the defendant was over the age of 21 and that the passenger was the defendant's 13-year-old daughter. The officers also examined the bottle of beer and determine that it was unopened and in its original container.

After it was ascertained that no underage drinking had occurred, the officer testified that he began "casually talking" to the defendant. He observed an Illinois Link card

in the name of Lowell Briggs located underneath the defendant's leg. When asked about the card, the defendant showed it to the officer. When asked where she obtained the card, the defendant said that she did not know how the card got in her vehicle and that possibly someone had dropped it there when they arrived.

At this point, the officer asked the defendant to exit the vehicle. The defendant was asked if there were any other items in the vehicle which could belong to Briggs and of which defendant was unaware. According to the officer, the defendant said that the officers were "free to look."

The officers did not search the vehicle at this time because they were still talking to defendant. She was then asked if she had anything on her that belonged to Briggs including any illegal drugs or narcotics, to which she replied "no." At this point, the defendant began emptying her pockets. As she was doing so, a clear plastic baggie fell to the ground that contained several yellowish-white rocks, which subsequently tested positive for cocaine. Defendant was then placed under arrest.

At the hearing on the motion to suppress, there was additional testimony adduced that the officers, who were on bicycle patrol, were completely outfitted in their uniforms at the time of the arrest. The officers also positioned themselves one each at the driver and passenger side doors of the defendant's vehicle.

In her motion to suppress, the defendant asserted that the officers' approach to her vehicle amounted to a Terry stop to investigate. She argued that after the officers determined that no underage drinking or open alcohol violation had taken place, the officers' investigation should have terminated. She contended that her continued detention by the officers after the basis for the Terry stop was dispelled constituted an unlawful seizure. The trial court granted the defendant's motion.

However, the appellate court reversed and remanded the matter, finding that the encounter between the officers and the defendant was consensual and, accordingly, that the defendant's rights under the fourth amendment had not been implicated. The appellate court reached this conclusion relying on the decision reached in United States v. Mendenhall, 446 U.S. 544, 554, 64 L. Ed. 2d 497, 509, 100 S. Ct. 1870, 1877 (1980). The appellate majority found that, based on the totality of the circumstances surrounding the encounter, the defendant was not seized by the officers because a reasonable person would have believed that she was free to leave at any time. In addition, the majority rejected defendant's contention that this encounter began as a Terry stop and held that an officer's approach of a vehicle for the purposes of an investigation does not per se create a Terry stop. People v. Gherna, 325 Ill. App. 3d 157, 162 (2001).

In overturning the appellate court and determining that a Terry stop had indeed occurred, the Gherna court stated:

> "Under the totality of the circumstances at bar, we conclude that the presence and positioning of the officers with their bicycles on either side of defendant's vehicle, combined with Officer Wasson's request to defendant to produce the bottle of beer for examination after questioning defendant and her daughter about their identities, constituted an official show of authority to which a reasonable innocent person would feel compelled to submit. At the time Officer Wasson asked defendant to hand him the bottle of beer, a reasonable innocent person in defendant's position would not have felt 'free to decline the officers' requests or otherwise terminate the encounter.' Bostick, 501 U.S. at 436, 115 L. Ed. 2d at 400, 111 S. Ct. at 2387. At that instant, defendant's movement was restricted: the positioning of the officers and their bicycles prevented defendant from either exiting the vehicle or driving the vehicle away

> from the scene. This blocked movement, combined with the request to examine the bottle of beer on the heels of other questioning, would '"have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business."' Bostick, 501 U.S. at 437, 115 L. Ed. 2d at 400, 111 S. Ct. at 2387, quoting Chesternut, 486 U.S. at 569, 100 L. Ed. 2d at 569, 108 S. Ct. at 1977; see also Hodari D., 499 U.S. at 628, 113 L. Ed. 2d at 698, 111 S. Ct. at 1552; cf. People v. Brownlee, 186 Ill. 2d 501, 520 (1999) ('officers restrained the movements of [a] car's occupants by their show of authority'). Accordingly, we conclude that defendant was seized." Gherna, 203 Ill. 2d at 180-81.

In this matter, we conclude that after the arresting officers approached Torres' vehicle, they proceeded to conduct a Terry stop. We do not believe that the officers were merely conducting a community caretaking function as the State maintains. Like the officers in Gherna, at the outset of the encounter, Officer Kurpiel and his partner positioned themselves on either side of Torres' vehicle. Torres was then asked to exit the vehicle, patted down and asked his identity. Kurpiel then asked Cordero if she was in any distress. Following the reasoning of Gherna, we find that the officers' conduct in positioning themselves on either side of Torres' vehicle, then demanding that he exit the vehicle and identify himself, constituted a show of their official authority such that a reasonable person in Torres' situation would not have felt free to decline the officer's request or to otherwise terminate the encounter. "A 'community caretaking' encounter between the police and a citizen involves no coercion or detention, and, consequently, does not violate the fourth amendment." (Emphasis added.) People v. Harris, 207 Ill. 2d 515, 522 (2003), citing People v. Gonzalez, 204 Ill. 2d 220, 224 (2003). In this situation, we find that a seizure indeed occurred.

Additionally we note that it is uncontradicted that the officers approached Torres' vehicle because they believed that a domestic dispute was taking place. Hence, the officers were not approaching Torres' vehicle because they believed that a stranded citizen may have been in need or to check on whether a citizen who appeared to be asleep in a vehicle on the side of the road was all right. This was not the situation in this matter. Instead, these officers approached Torres' vehicle because they believed that a crime was being committed or could potentially be committed in the near future. From Kurpiel's own testimony alone, this court could come to the conclusion that the officers were not attempting to conduct a caretaking function when they initially approached Torres and his girlfriend but instead were performing a Terry stop.

Now that we have determined that a Terry stop occurred, we must now consider whether it was reasonable. In order to ascertain the reasonableness of a Terry stop, a dual inquiry must be asked. The stop will be deemed to be reasonable if the officers' actions in initiating the stop are justified and if the officers' actions during the course of the stop are reasonably related in scope to the circumstances that justified the interference in the first place. Harris, 207 Ill. 2d at 522-23, citing Gonzalez, 204 Ill. 2d at 228, quoting Terry, 392 U.S. at 19-20, 20 L. Ed. 2d at 905, 88 S. Ct. at 1879.

With respect to the first inquiry, we find that the stop was justified. When the officers first approached Torres' vehicle, their observations led them to believe that they were witnessing an ongoing domestic dispute. Kurpiel stated he saw hands flying and that he saw Cordero in the vehicle "looking very submissive." Kurpiel further testified that he saw "arguing" and "yelling."

With respect to the second inquiry, we find that the officers' initial conduct was proper. The officers only

approached Torres' vehicle because they believed that a domestic dispute may have been taking place. Kurpiel testified that Cordero was looking submissive. So, it is fair for this court to assume from Kurpiel's testimony that the officers believed that Cordero may have been in some sort of danger or imminent danger when they approached Torres' vehicle.

Upon reaching Torres' truck, Torres was asked to exit the vehicle by Kurpiel's partner. It was Kurpiel's testimony that Torres was asked to exit the vehicle so that Cordero could speak more freely. At this point, Kurpiel then asked Cordero if she was all right. There is conflicting testimony as to exactly what was said between Kurpiel and Cordero. However, it is uncontested that Kurpiel asked Cordero if she were all right and Cordero's response was that she was fine and not in any danger.

By now Kurpiel's partner had patted Torres down and had obtained his identity. He further requested that Kurpiel run a name check on Torres. This point in the encounter is where the officers' actions become unreasonable because they were no longer rationally related in scope to the circumstances that justified the interference in the first place.

By now Kurpiel had been told by Cordero that she was fine and not in any danger. Kurpiel had not related this information to his partner. At this time, however, his partner had requested Torres' identity and was asking Kurpiel to run a name check on Torres. Kurpiel, however, knew that Cordero was not in any danger and ran the name check on Torres anyway. The name check revealed that Torres had a warrant for a DUI. This led to a subsequent search of Torres' vehicle and person which revealed a gun and gun clip. These actions by the officers are what amounted to an illegal search and seizure and violated Torres' fourth amendment rights.

This precise issue has been considered in People v. Harris, 207 Ill. 2d 515 (2003). There, the defendant was charged with the unlawful possession of a controlled substance. He filed a motion to quash his arrest and suppress the evidence alleging that the arresting officer (Officer Reed) had neither a warrant to search him nor probable cause to believe that he had committed a crime. At a hearing on the motion, it was adduced that the defendant was a passenger in a vehicle that had been stopped by the police for making an illegal left turn.

When the driver was asked for his identification by the police officers, he informed them that he did not have his driver's license on his person. The driver then proceeded to give the officers a false name and birth date. This information was transmitted to the county dispatch by the officers, and the officers subsequently learned that there was no valid driver's license for anyone by the name given to them by the driver. After confronting the driver, the officers learned the driver's real name and that his license had either been suspended or revoked.

The officers then asked the defendant for his identification. One of the officers testified that this was done with the intent to release the vehicle to the defendant if the defendant had a valid driver's license. However, at no time during the traffic stop was the defendant asked if he could drive the vehicle. The defendant's information was run through the county dispatch and it revealed that the defendant had an outstanding warrant. The defendant was then placed under arrest and searched. When the defendant was searched, the officers found cocaine on his person.

At the conclusion of the hearing, the trial court denied the defendant's motion. At trial, the defendant was found guilty of unlawful possession of a controlled substance. The defendant appealed, arguing that the trial court should have granted his motion to quash arrest and suppress

evidence. The appellate court agreed and reversed the trial court. The State subsequently appealed.

The Harris court affirmed the appellate court's decision. Its reasoning follows:

> "The warrant check performed by Officer Reed was not related to the initial justification for the traffic stop. Officer Reed initiated the traffic stop because the driver made an illegal left turn. Defendant, however, was simply the front-seat passenger in the car and was not implicated in the traffic violation. Thus, the warrant check was not directly related to the initial justification for the traffic stop. Further, the warrant check was not supported by a reasonable, articulable suspicion that defendant had committed or was about to commit a crime. Officer Reed neither saw nor suspected that defendant had committed any wrongdoing. Indeed, Officer Reed testified that at the time he requested defendant's identification, defendant was not doing anything suspicious and Officer Reed did not suspect defendant of committing a criminal offense. In the absence of a reasonable connection to the purpose of the stop or a reasonable, articulable suspicion, we consider whether the check impermissibly prolonged the detention or changed the fundamental nature of the stop. From the record, we cannot ascertain whether the warrant check prolonged the detention. Officer Reed testified at trial that he transmitted the driver's and defendant's information to county dispatch at the same time. Some time later, county dispatch informed Officer Reed that the driver's license was either suspended or revoked. County dispatch also informed Officer Reed that defendant had an outstanding warrant. However, Officer Reed did not testify that the warrant check performed on defendant was completed before the check on the driver. The warrant check performed on defendant could well have lengthened the duration of the

detention if the officer had to wait for the results of the warrant check. Under the circumstances at bar, however, regardless of the duration of the detention, the warrant check was impermissible because it changed the fundamental nature of the traffic stop. The warrant check converted the stop from a routine traffic stop into an investigation of past wrongdoing by defendant. As Justice Murphy aptly observed in Holt,

> Terry's scope requirement is a common sense limitation on the power of law enforcement officers. It prevents law enforcement officials from fundamentally altering the nature of the stop by converting it into a general inquisition about past, present and future wrongdoing, absent an independent basis for reasonable articulable suspicion or probable cause.' United States v. Holt, 264 F.3d 1215, 1240 (10th Cir. 2001) (Murphy, J., concurring in part and dissenting in part)." Harris, 207 Ill. 2d at 526-28.

Here, as in Harris, the identification check or warrant check that the officers performed on Torres converted the initial Terry stop from a routine stop into an impermissible investigation of past wrongdoing that the defendant may have possibly committed. Before Kurpiel decided to run the name check, he knew that Cordero was not in any danger. This was the only reason that the officers decided to stop this couple in the first place, to determine if she was in or potentially in harm's way. We reiterate that these officers only approached Torres' vehicle because they believed that a domestic dispute may have been taking place.

We also note, however, that the couple may have been in the middle of an innocuous animated discussion about a topic of great interest to both of them. They were in an enclosed vehicle. Kurpiel testified that he "saw" arguing and yelling. However, he never testified that he heard any part of the of the couple's conversation. There was no

evidence of grabbing, pushing, hitting or shoving between the couple. All of a sudden, Torres finds himself outside of his vehicle, being patted down by a police officer and asked for his identification. Never once being told why. Although this is not a determinative factor in this matter, we do take note of this.

After Kurpiel was informed by Cordero that Torres posed no danger to her, the officers should have left this couple alone. Instead, the officers pushed ahead and ran a name check on the defendant. Police officers in this type of situation are not allowed to run a general inquisition. This was impermissible and violated Torres' constitutional rights. Harris, 207 Ill. 2d at 526-28. As such, this matter is reversed.

CONCLUSION

For the foregoing reasons, the decision of the trial court is reversed.

Reversed.

Campbell, P.J. and O'Brien, J., concur.

APPENDIX B
Motions and Orders Before the Illinois Supreme Court:
The People of the State of Illinois, Appellant, v. Jose Torres, Appellee. No. 98301.

APPENDIX B-1

Opinion of the Illinois Appellate Court
Docket No. 98301, Filed October 6, 2004,
The People of the State of Illinois, Appellant, v. Jose Torres, Appellee.

98301

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 6, 2004

Ms. Yvette Loizon
Assistant State's Attorney
309 Richard J. Daley Center
Chicago, IL 60602

No. 98301 – People State of Illinois, petitioner, v. Jose Torres, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 2004.

APPENDIX B-2

The People's Motion to Cite Additional Authority *Instanter*, Filed June 29, 2004: The People of the State of Illinois, Petitioner, v. Jose Torres, Respondent.

No. 98301

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Petitioner,	)	Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District No. 02-2579 There heard on appeal from
v.	)	the Circuit Court of County, Criminal Division, No. 02 CR
JOSE TORRES, Defendant-Respondent.	)	5209 Honorable Catherine M. Haberkorn, Judge Presiding

MOTION TO CITE ADDITIONAL AUTHORITY *INSTANTER*

The People of the State of Illinois, by their Attorney, RICHARD A. DEVINE, State's Attorney of Cook County, Illinois, through RENEE GOLDFARB, ANNETTE COLLINS and YVETTE LOIZON, Assistant State's Attorneys, ask this Honorable Court for Leave to Cite Additional Authority *Instanter*. The People state the following in support of their Motion.

1. Defendant was convicted of aggravated unlawful use of a weapon and was sentenced to 18 months probation on July 2, 2002, by the Honorable Catherine M. Haberkorn.

2. Defendant filed a notice of appeal on July 23, 2002.

3. On May 20, 2003, defendant filed his brief in the Illinois Appellate Court alleging that the trial court erred in denying his motion to suppress evidence. In support, defendant maintained that, while police officers observed he and his girlfriend in a verbal argument, that observation was insufficient to create a reasonable and articulable suspicion sufficient to justify a Terry stop. Defendant alternatively argued that, even if the initial stop was warranted, the police officers were required to cease their investigation of the incident once the putative victim, while in defendant's presence, indicated that she was "okay." Defendant further asserted that the UUW statute was unconstitutional on due process grounds.

4. The People filed their response brief on July 16, 2003, wherein they asserted that the police officers in question properly exercised their community caretaking function when they approached defendant's vehicle to ensure that his female passenger was safe. Alternatively, the People argued that the police officers' conduct was proper under Terry, based on the officers' reasonable and articulable suspicion that a domestic violence altercation was about to occur.

5. The Illinois Appellate Court, First District, Fifth Division, heard oral argument on January 4, 2004.

6. On March 19, 2004, the Illinois Appellate Court, First District, Fifth Division, issued a published opinion reversing defendant's conviction. People v. Torres, 807 N.E.2d 654 (2004). In its opinion, the Fifth Division concluded that the officers conducted a Terry stop and were not acting in their community caretaking capacity when they approached defendant's vehicle. With respect to the Terry issue, the Fifth Division held that the officers had a reasonable and articulable suspicion to approach the vehicle, but concluded that the suspicion was alleviated once the putative victim

indicated that she was "okay." The Fifth Division found that any further investigation conducted after the putative victim's statement, including asking defendant his name and running a warrant check, exceeded the scope of Terry and constituted an illegal search and seizure. In reaching this decision, the Fifth Division relied entirely on this Honorable Court's holding in People v. Harris, 207 Ill. 2d 515 (2003), a case involving the running of a warrant check on a passenger during a traffic stop who was not suspected of any illegal activity.

7. On April 23, 2004, the People filed a Petition for Leave to Appeal claiming that the Fifth Division's ruling misapplied and overextended this Court's holding in People v. Harris, and thus improperly restricted police officers' ability to conduct reasonable and necessary investigation, such as obtaining a suspect's name and running a warrant check, when confronted with a domestic violence situation. The People argued that the Fifth Division's holding created the dangerous rule that police officers are required to walk away from the scene of a potential domestic violence situation, without further investigation, once the putative victim states, in her alleged abuser's presence, that she is "okay," despite sound principles of public policy and domestic violence protocol which instruct otherwise.

8. The United State's Supreme Court recently discussed the policy issues surrounding appropriate police investigation, such as the running of name and warrant checks, during a Terry stop involving a suspected domestic violence altercation in Hiibel v. Nevada, 2004 U.S. Lexis 4385 (2004). (See Attached). In reaching its ruling addressing the constitutionality of a statute criminalizing a citizen's refusal to provide his name to police, the Supreme Court concluded that it was imperative for officers to obtain a suspect's identity and to run a warrant check where they have a reasonable suspicion that a domestic violence offense has occurred or is about to occur. The Court stated: "Knowl-

edge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder. ***Identity may prove particularly important in cases such as this, where the police are investigating what appears to be a domestic assault. Officers called to investigate domestic disputes need to know whom they are dealing with in order the assess the situation, the threat to their own safety, and possible danger to the potential victim." Hiibel, 2004 U.S. Lexis 4385 at 18.

9. The People submit that the Supreme Court's statements in Hiibel directly contradict the rule set forth by the Fifth Division in the instant case, and demonstrate that the police appropriately continued their investigation, namely obtaining defendant's name and running a warrant check, even after the putative victim indicated that she was "okay."

10. The People, therefore, request that the foregoing opinion be considered during this Honorable Court's review of the People's Petition for Leave to Appeal, as it is clearly instructive to the case at bar.

THEREFORE, the People of the State of Illinois respectfully request leave to file the attached opinion as additional authority.

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BY: _____
RENEE GOLDFARB, Supervisor
Criminal Appeals Division

BY: _____
ANNETTE COLLINS,
Assistant State's Attorney

BY: _____
YVETTE LOIZON,
Assistant State's Attorney

APPENDIX B-3

Respondent's Response to the People's Motion to Cite Additional Authority *Instanter*, Filed July 8, 2004: The People of the State of Illinois, Petitioner, v. Jose Torres, Respondent

No. 98301

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee,	)	Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District No. 02-2579
v.	)	There heard on appeal from the Circuit Court of County, Criminal Division, No. 02 CR 5209
JOSE TORRES, Respondent-Appellant.	)	Honorable Catherine M. Haberkorn, Judge Presiding

RESPONSE TO THE STATE'S MOTION TO CITE ADDITIONAL AUTHORITY *INSTANTER*

Respondent-Appellant Jose Torres, by Michael J. Pelletier, Deputy Defender, and Darrel F. Oman, Assistant Appellate Defender, responds to the State's Motion to Cite Additional Authority *Instanter* and states as follows:

1. In its Motion to Cite Additional Authority *Instanter,* the State misrepresents the recent decision of the United States Supreme Court in *Hiibel* v. *Nevada,*___ U.S. ___,2004 U.S. LEXIS 4385 (June 21,

2004), and significantly overstates its relevance to this case.

2. The State erroneously contends that the *Hiibel* decision "directly contradict(s) the rule set forth by the Fifth Division in the instant case." State Mot. to Cite, at ¶ 9. On the contrary, the holding in *Hiibel* has no bearing on this case. As the State concedes, *Hiibel* only addressed "the constitutionality of a statute criminalizing a citizen's refusal to provide his name to police." State Mot. To Cite, at ¶ 8. *Hiibel* simply holds that a statute authorizing officers with reasonable suspicion to demand the name of a suspect does not violate the Fourth or Fifth Amendment to the U.S. Constitution. 2004 U.S. LEXIS 4385, at *15-23. No analogous statute is at issue in this case. The officers never claimed that they arrested Mr. Torres because he refused to provide his name. In fact, the record shows that Mr. Torres fully cooperated with the officers at all times.

3. Moreover, the factual scenario at issue in *Hiibel* is very different that the facts of this case. The officer's conduct in *Hiibel* was supported by substantial reasonable suspicion that the defendant had just assaulted a woman. An eye witness actually saw the defendant physically assault a woman and reported this information to the police. The defendant was arrested after he became agitated, taunted a police officer "for several minutes," and refused to identify himself after being asked eleven times. 2004 U.S. LEXIS 4385, at *8-9. By contrast, there is no evidence in this case that Mr. Torres ever assaulted anybody. The trial court specifically ruled that the officers observed only a non-physical, "heated discussion" between Mr. Torres and Ms. Cordero. (R. 51.) This conclusion is consistent with Officer Kurpiel's testimony that he never saw Mr. Torres strike Ms.

Cordero, did not observe any evidence of violence, and had no evidence that Mr. Torres had committed any crime. (R. 17-18.) Rather, he simply observed Mr. Torres gesturing with his hands in the context of a conversation with Ms. Cordero. (R.22.) The trial court also found that the very first thing the officers did after approaching the truck was to ask Ms. Cordero whether everything was all right. (R. 51.) It is undisputed that she immediately answered the officer's question by explaining that she was not in any danger but simply was having a private, non-violent conversation with her boyfriend. (R. 17, 31,41.)

4. The Appellate Court correctly held that, to the extent the officers initially had reasonable suspicion to approach the truck, any reasonable suspicion expired once Ms. Cordero confirmed that she was not in any danger. *People v. Torres,* No. 1-02-2579,2004 Ill. App. LEXIS 265 (1st Dist. March 19, 2004). At that point, the officers had no basis to believe that any crime occurred. Thus, under the mandatory authority contained in *Terry v. Ohio,* 392 U.S. 1, 88 S. Ct. 1868,20 L. Ed. 2d 889 (1968); *People v. Gherna,* 203 Ill. 2d 165,784 N.E.2d 799 (2003); *People v. Gonzalez,* 204 Ill. 2d 220, 789 N.E.2d 260 (2003); and *People v. Harris,* 207 Ill. 2d 515, 802 N.E.2d 219 (2003), the Appellate Court correctly concluded that the officers exceeded their authority when they subsequently removed Mr. Torres from his parked truck, frisked him, demanded identification, questioned him, and detained him while conducting a name check. (R. 16-17, 21-22, 37, 42, 47.) This conduct was unrelated to the initial purpose of the stop and amounted to an unconstitutional fishing expedition, since it occurred at a time when the officers lacked any basis to suspect that a crime had been committed. The State has not -- and cannot -- cite a single case authorizing a warrant

check, further detention, and further questioning once reasonable suspicion has been exhausted. On the contrary, every single relevant decision indicates that the Fourth Amendment required the officers to leave the couple alone.

5. Finally, the State's claim that the officers conducted a domestic violence investigation by "obtaining defendant's name and running a warrant check" is undermined by the record in this case. State Mot. To Cite, at ¶ 10. Unlike the officer in *Hiibel,* the officers here did not simply ask Mr. Torres' name. On the contrary, they removed Mr. Torres from his parked truck, frisked him, demanded identification, questioned him, and detained him while conducting a name check. This occurred after the officers completed their domestic violence investigation, confirmed that Ms. Cordero was not in any danger, and exhausted any reasonable suspicion that a crime had been committed.

6. For all these reasons, *Hiibel* provides no support for the State's Petition for Leave to Appeal. Therefore, since the Appellate Court's decision involved a straightforward application of controlling precedent to an unremarkable set of facts, and since it does not conflict with *Hiibel* or any other decision, this Court should deny the State's Petition for Leave to Appeal.

WHEREFORE, Respondent-Appellant Jose Torres respectfully requests that this Court deny the State's Petition for Leave to Appeal.

Respectfully submitted,

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APPENDIX B-4

**Order of the Illinois Supreme Court, Docket No. 98301,
Entered July 13, 2004:
The People of the State of Illinois, Petitioner, v. Jose Torres, Respondent.**

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035

FIRST DISTRICT OFFICE
20TH FLOOR
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(312) 793-1332

July 13, 2004

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Ms. Yvette Loizon
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309 Richard J. Daley Center
Chicago, IL 60602

In re: People State of Illinois, petitioner, v. Jose Torres, respondent. *No.* 98301

Today the following order was entered in the captioned case:

Motion by petitioner to cite additional authority instanter. Motion Allowed.

Order entered by Justice Fitzgerald.

Very truly yours,

Clerk of the Supreme Court

cc: Hon. Lisa Madigan
Mr. Darrel F. Oman

APPENDIX C

Excerpt of Report of Proceedings of Trial Court's Findings in People v. Jose Torres, 02 CR 5209, May 20, 2002:

STATE OF ILLINOIS)
) SS :
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	No. 02 CR 5209
VS	)	
JOSE TORRES	)	
Defendant.	)	

BE IT REMEMBERED that the above-entitled cause came on for hearing before the Honorable CATHERINE HABERKORN, on the 20th day of May A.D., 2002 in Skokie, Illinois.

APPEARANCES:

HON. RICHARD DEVINE
State's Attorney of Cook County, by
MR. FERDINAND MINELLI I
Assistant State's Attorney,
appeared for the People;

MR. JOHN DE LEON AND
MR. CARLOS GONZALEZ
appeared for the Defendant.

Valerie M. Pisani, CSR# 084-001474
Official Court Reporter
5600 Old Orchard Road - Room 204
Skokie, Illinois 60077

* * *

THE COURT: I believe the Officer testified clear and convincingly. I believe he testified, and was corroborated by both of the Defense witnesses, that in fact the first thing he asked the female," Is everything all right?"

There is no reason he would go up to a female for no reason at all and ask her if everything is okay.

He didn't go up to the defendant, ask if everything is okay. He went up to the female because-- why, because exactly what he said was happening was happening.

There was a heated discussion or argument or disagreement, whatever you want it to be called, between a very large male who I observed here and very young smaller female.

He went up to her to ask her if she was okay. Not out of nowhere, just picked her out of all the streets of Chicago to ask her that for no reason at all.

I believe he testified clearly and convincingly. I don't believe the defendant's witnesses. I believe at that time the Officers did have a right to investigate to do a name check if in fact a warrant existed.

Motion State, motion for directed finding is granted.

Motion to quash and suppress is denied.

* * *

[C41 – C-42]

Supreme Court, U.S.
FILED
FEB 25 2005
OFFICE OF THE CLERK

(2)

No. 04-940

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

JOSE TORRES, RESPONDENT.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
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(312) 814-3698

*Counsel of Record

Counsel for Petitioner

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

As noted in the State's petition for certiorari,* the judgment below rests primarily, if not exclusively, upon *People v. Harris*, 207 Ill. 2d 515, 802 N.E.2d 219 (2003). See Pet. 3. Accordingly, the State asked that the petition be held and disposed of consistently with this Court's resolution of *Illinois v. Harris*, No. 03-1224, where the State had sought review of the judgment in *People v. Harris*, *supra*. See Pet. 4.

After the certiorari petition in this case was filed, this Court granted the State's certiorari petition in *Harris*, vacated the judgment, and remanded to the Illinois Supreme Court for further consideration in light of *Illinois v. Caballes*, 543 U.S. ___ (2005). See *Illinois v. Harris*, 543 U.S. ___ (2005). The certiorari petition in this case should receive the same disposition.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment below should be vacated, and the case should remanded to the Appellate Court of Illinois for further consideration in light of *Illinois v. Caballes*, 543 U.S. ___ (2005).

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* On January 11, 2005, the Attorney General of Illinois, on behalf of petitioner State of Illinois, filed a motion (i) to substitute her Solicitor General as counsel of record for the State, and (ii) to substitute the certiorari petition submitted therewith for the petition previously filed by the Office of the State's Attorney of Cook County. That motion remains pending. The references in this brief to the State's certiorari petition are to the petition submitted by the Attorney General.

Respectfully submitted.

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*Counsel of Record

FEBRUARY 2005